

8 July 1964

25X1A

MEMORANDUM FOR:

25X1A

Col. Reiter, Air Force L&L, called this morning to say he had spoken to Bill Darden and Darden himself mentioned that possibly the Missing Persons Act bill could come up between the Republican and Democratic conventions. Reiter believes that it would be appropriate for either you or (preferably you) to speak to Mr. Darden first and ask Darden what are the chances.

Marie

State, USAF reviews completed. On file OPM release instructions apply. Referral to GAO not required.

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DEPARTMENT OF THE AIR FORCE
OFFICE OF THE SECRETARY

MEMORANDUM

John:

Here it is and good luck.


JACK REITER

JUNE 13, 1962

Mr. Phillip S. Hughes
Assistant Director for
Legislative Reference
Bureau of the Budget

Dear Mr. Hughes:

On May 17, 1962, you requested the Commission's views on the Department of Defense draft bill, "To further amend the Missing Persons Act to cover certain persons detained in foreign countries against their will, and for other purposes."

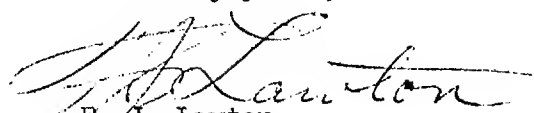
In addition to clarifying and modernizing certain definitions and references contained in the Missing Persons Act, the proposed bill would add to the categories of persons covered by the Act, those persons who are "detained in a foreign country against his (their) will." The purpose of the proposed revision is to make it clear that persons detained in a foreign country against their will are entitled to the benefits provided by the Missing Persons Act, even though such detention is during a period when a state of war does not exist.

The Department of Defense points out that under "cold war" conditions, a person may be apprehended and held, or tried by a foreign power, with a lengthy prison term to be served in the foreign country. The Department believes that providing the benefits of the Missing Persons Act to such persons is clearly within the intent of that Act, but that the present language of the Act does not clearly cover such a situation.

The Commission concurs in the proposed provisions which would add to the coverage of the Missing Persons Act, those persons who are "detained in a foreign country against his (their) will." The Commission is not commenting on the proposed revision of Section 13 of the Missing Persons Act which relates to Federal income tax deferments.

By direction of the Commission:

Sincerely yours,


F. J. Lawton
Acting Chairman



COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON 25

B-22929

June 11, 1962

Hyde

Honorable David E. Bell
Director, Bureau of the Budget

Dear Mr. Bell:

By Legislative Referral Memorandum dated May 17, 1962, the Assistant Director for Legislative Reference enclosed for our comments a Department of Defense draft bill "To further amend the Missing Persons Act to cover certain persons detained in foreign countries against their will, and for other purposes." There was enclosed a draft of letter to the Speaker of the House of Representatives concerning the proposal.

Under the provisions of section 2 of the Missing Persons Act, as amended, 50 U.S.C. App. 1002, the head of any Executive department, independent establishment, or agency of the Federal Government, has authority to continue to credit the pay accounts of both military and civilian persons within the scope of the statute who are "officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force." The draft bill would add another category to the casualty status, namely, a person who is "detained in a foreign country against his will." The proposal would also redefine the term "person" in section 1 of the act, 50 U.S.C. App. 1001, insofar as it relates to military personnel, by substituting the definition of a member of the uniformed services as defined in section 102(a) and (b) of the Career Compensation Act of 1949, as amended, 37 U.S.C. 231(a) and (b). The proposal would make a few other minor amendments, including an amendment to the provision (section 13, 50 U.S.C. App. 1013) relating to Federal income tax reporting and payment, for administrative purposes.

It is pointed out in the proposed letter to the Speaker of the House of Representatives that the purpose of the legislation is to clarify the definition of "missing persons" by identifying, as an additional category, those persons who are "detained in a foreign country against his (their) will." It is stated that this terminology

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would include any situation which would involve persons who are separated from their organizations or interrupted in their assignments by the action of a foreign power.

Whether an additional casualty status category should be added to the categories now specified in the Missing Persons Act involves a question of policy for Congress to determine and we have no comment in that respect. While we have not had an occasion to render a formal decision on the question whether a person (military or civilian) who, in the performance of assigned duties, is held or detained in a foreign country against his will properly may be considered as being in a missing or interned status within the meaning of section 2 of the Missing Persons Act, as amended, 50 U.S.C. App. 1002, for pay and allowance purposes, we are inclined to the view that Congress intended the present language of the Missing Persons Act, as amended, to cover such a situation. Since, however, the matter is not entirely free from doubt, and in order to avoid any misunderstanding should a situation arise which might be questionable, we would have no objection to favorable consideration of the legislative proposal.

Sincerely yours,



Comptroller General
of the United States



DEPARTMENT OF STATE
WASHINGTON

June 6, 1962

Hyde

Dear Mr. Bell:

In Mr. Hyde's memorandum of May 17, 1962 the views of this Department were requested on a draft bill proposed by the Department of Defense "To further amend the Missing Persons Act to cover certain persons detained in foreign countries against their will and for other purposes."

As we understand the explanation accompanying the draft bill, its purpose is to clarify the definition of "missing persons" by identifying, as an additional category, those persons who are detained in a foreign country against his (their) will, thereby obtaining clear authority for providing all the benefits of the Missing Persons Act to those personnel who may be detained by a foreign power.

In the belief that such clarification is a desirable amendment, the Department supports the enactment of the proposed legislation.

Sincerely yours,

For the Secretary of State:

Frederick Dutton

Frederick G. Dutton
Assistant Secretary

The Honorable
David E. Bell, Director,
Bureau of the Budget.

15 May 1963

MEMORANDUM FOR: Director, Office of Legislative Liaison
Office of the Secretary of the Air Force

ATTENTION: Lt. Col. Jack Reiter
Legislative Branch
Congressional Committee Division

SUBJECT: H. R. 2989, A Bill To further amend the
Missing Persons Act to cover certain
persons detained in foreign countries
against their will, and for other purposes

In accordance with the request of your Office of 30 April 1963, the following documents have been drafted and are forwarded herewith in an original and two copies for your use in the hearings to be scheduled by the House Armed Services Committee:

1. Proposed Witness Statement.
2. Explanation and Justification of the Proposed Bill, together with
3. Sectional Analysis and Explanation.
4. Ramseyer of the Missing Persons Act, as amended by the proposed H. R. 2989.

It is anticipated, in addition, that the Director of Central Intelligence will provide the Chairman of the House Armed Services Committee with a classified letter outlining Central Intelligence Agency support for passage of the proposed Bill.

25X1A


Assistant Legislative Counsel

Attachments

O & 1 - Addressee

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1 - OGC/LC Chrono.

OGC/LC:JGO:mks

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WITNESS STATEMENT

Introduction

Mr. Chairman and Members of the Armed Services Committee,
I want to thank you for the privilege of appearing this morning etc.
(personal preference).

Need for Clarifying Legislation

The need for clarifying legislation to perfect the administration of the Missing Persons Act (MPA) is illustrated by the cases of Francis Gary Powers and the two RB-47 pilots shot down by the Soviets over the Barents Sea on 1 July 1960. Captain John R. McKone and Captain Freeman B. Olmstead were released on 26 January 1961 without having been tried, and Francis Gary Powers was subsequently released on 10 February 1962 after serving less than two years of a ten-year sentence. The carrying of Captain McKone and Captain Olmstead, the RB-47 pilots, in a "missing" status during their absence, the only term of the MPA that had literal application to their situation, when for all practical purposes their whereabouts were known, provided an administrative anomaly for the Air Force. In addition, had Captain McKone and Captain Olmstead been tried and forced to serve ten-year sentences, administration under the present terminology of the Act would be strained.

Purpose of the Legislation

The purpose of H. R. 2989 is to provide for specific coverage in cold war situations under the MPA for military and civilian personnel employed by the Federal Government. There are at present _____ military and civilian persons who are being administered in the Department of Defense under the MPA. To assist further in the orderly and equitable administration of the Act, amendment to reestablish the former policy of deferment of Federal income tax reporting and payment during the period such personnel are in a missing status is also recommended.

Proposed Amendments to Existing Law

The benefits of the MPA are provided for persons within the scope of the Act who are "officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, or besieged by a hostile force." All of these terms, with the exception of the word "missing," standing alone and possibly "interned in a foreign country," were originally predicated upon a declared war, and if treated literally, would imply a condition of declared war. As is seen in the Powers, McKone and Olmstead cases, these terms do not clearly apply using the normal meaning of the words. Clear cut language is deemed necessary, therefore, to cover such personnel who are lost or are detained under other than wartime battle conditions. The bill proposes insertion

of the phrase "detained in a foreign country against his will" to fill this gap. This terminology "detained in a foreign country against his will" is intended to include any situation which would involve persons who are separated from their organizations or interrupted in their assigned mission by action of a foreign power. Exception to this general rule would be in cases in which an official determination of the head of the department or agency concerned (which determination is authorized and required by sections 2 and 9 of the Act) would bar an individual from receipt of the benefits provided by the Act, i. e., absence without authority, imprisonment by a court having jurisdiction under Status of Forces agreements, etc.

Sec. 13 of the MPA is amended to provide for the filing and payment of income tax on the fifteenth day of the third month after termination of the "missing" status or after an executor, administrator or conservator of the estate of a missing person has been appointed. This provision was an integral part of the MPA when it was approved in 1942 and continued in effect until December 31, 1947. It was not reestablished when the remainder of the Act was reactivated by the Selective Service Act of 1948. As in the illustration above, in a cold war situation there is increased potential that individuals determined to be covered under the MPA may continue in the "missing" status for an extended period of time. During such disability the individual is unable to file and pay taxes on his own behalf, and under

the Revenue Code, there is no one who is responsible for filing on his behalf. Should the normal three year period for filing for refund by the individual run out during the period of disability, or if interest is running on additional tax due from him, no relief is authorized by the Revenue Code. The requested provision is considered to be necessary for orderly and equitable administration of the affairs of missing persons.

Sec. 1 of the MPA is amended by the proposed bill to define the military personnel who are covered under the Act in consonance with the definitions provided in the Career Compensation Act of 1949, as amended, 37 U. S. C. 231. This clarification will allow a common application of the definitions set forth in the Career Compensation Act and obviate the need for future amendment to meet changes in military personnel designations.

Other clarifying word changes or additions are also set forth in the proposed bill.

(1) Sec. 1 (b) is amended to include "Air Force" in the definition of "active service" and Sec. 10 to include "Air Force" in the listing "Army, Navy, Marine Corps, and Coast Guard."

(2) The phrase "or employment" is added in Sec. 2 to specify expiration of term of employment of civilians as well as expiration of term of service of military personnel. Both military and civilian personnel employed by the government are covered under the Act by the definitions set forth at Sec. 1.

(3) Changes are proposed in the wording of Sec. 5, Sec. 6 and Sec. 12 to conform the references in those sections to Sec. 2 of the Act.

Cost and Budget Data

The enactment of H. R. 2989 into law will not increase costs to the Department of Defense. The MPA benefits are presently being applied to persons carried as "missing."

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EXPLANATION AND JUSTIFICATION

Purpose of the Legislation

The purpose of the proposed legislation is to provide specific coverage under the Missing Persons Act (MPA) for military and civilian personnel employed by the Federal government in cold war situations and to re-establish the former policy of deferment of Federal income tax reporting and payment during the period such personnel are in a missing status.

Proposed Amendments to Existing Law

The MPA provides authority in Sec. 2 for the heads of executive departments and agencies to continue the pay and allowances of persons within the scope of the Act who are "officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force." All of these terms, with the exception of the word "missing" standing alone, and possibly "interned in a foreign country", were originally predicated upon a declared war and if treated literally, would imply a condition of declared war. Today, a person engaged in "cold war" or other governmental activity may be apprehended and held, or tried by a

foreign power, resulting in a long period of retention by a foreign force or country. Specific coverage is deemed necessary, therefore, for such personnel who are lost or detained under other than wartime conditions and is provided by insertion of the phrase "detained in a foreign country against his will." This terminology is intended to include any situation which would involve persons who are separated from their organizations or interrupted in their assignments by action of a foreign power. Exception to this general rule would be cases in which an official determination of the head of the department or agency concerned (50 U. S. C. App. 1009) would bar an individual from receipt of the benefits provided by the Act, i. e., absence without authority, imprisonment by a court having jurisdiction under Status of Forces agreements, etc.

Sec. 13 of the MPA is amended to provide for the filing and payment of income tax on the fifteenth day of the third month after termination of the "missing" status or after an executor, administrator or conservator of the estate of a missing person has been appointed. This provision was an integral part of the MPA when it was approved in 1942 and continued in effect until December 31, 1947. It was not re-established when the remainder of the Act was reactivated by the Selective Service Act of 1948. As in the

illustration above, in a cold war situation there is increased potential that individuals determined to be covered under the MPA may continue in the "missing" status for an extended period of time. During such disability the individual is unable to file and pay taxes on his own behalf, and under the Revenue Act, there is ~~no one~~ who is responsible for filing on his behalf. Should the normal three year period for filing for refund by the individual run out during the period of disability, or if interest is running on additional tax due from him, no relief is authorized by the Revenue Code. The requested provision is considered to be necessary for orderly and equitable administration of the affairs of missing persons.

Sec. 1 of the MPA is amended by the proposed bill to define the military personnel who are covered under the Act in consonance with the definitions provided in the Career Compensation Act of 1949, as amended, 37 U.S.C. 231. This clarification will allow a common application of the definitions set forth in the Career Compensation Act and obviate the need for future amendment to meet changes in military personnel designations.

Other clarifying word changes or additions are also set forth in the proposed bill.

(1) Sec. 1(b) is amended to include "Air Force" in the definition of "active service" and Sec. 10 to include "Air Force" in the listing "Army, Navy, Marine Corps, and Coast Guard."

(2) The phrase "or employment" is added in Sec. 2 to specify expiration of term of employment of civilians as well as expiration of term of service of military personnel. Both military and civilian personnel employed by the government are covered under the Act by the definitions set forth at Sec. 1.

(3) Changes are proposed in the wording of Sec. 5, Sec. 6 and Sec. 12 to conform the references in those sections to Sec. 2 of the Act.

Cost and Budget Data

The authorities requested in H. R. 2989 arise from the additional experience gained in the application of the MPA in cold war situations in the six years since its enactment into permanent legislation.

(P. L. 85/217, 71 Stat. 492, 29 August 1957) Passage of this legislation will not increase costs to the Department of Defense. The Department is presently applying the MPA to persons who are carried as "missing."

Attachment:

Sectional Analysis and Explanation

Approved For Release 2002/05/17 : CIA-RDP75B00380R000800130015-8



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MISSING PERSONS ACT AMENDMENTS OF 1963

SECTIONAL ANALYSIS AND EXPLANATION

(NOTE: Proposed legislation by section is set forth on the left with the existing Missing Persons Act statutory provision on the right.)

Proposed Legislation

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Missing Persons Act, as amended (50 U. S. C. App. 1001 et seq.), is amended as follows:

- (1) Section 1(a) is amended--
 (A) by striking out clauses (1) and (2) and by inserting the following in place thereof:

"(1) a member of the uniformed services as defined in section 102 (a) and (b) of the Career Compensation Act of 1949, as amended (37 U. S. C. 231 (a) and (b));" and

(B) by redesignating clause (3) as clause "(2)".

Existing Legislation

Sec. 1 (a) the term "person" means (1) commissioned officer, warrant officer, enlisted person (including persons selected under the Selective Training and Service Act, as amended), member of the Army or Navy Nurse Corps (female), wherever serving; (2) commissioned officer of the Coast and Geodetic Survey or the Public Health Service; and (3) Civilian officers and employees of the departments, exclusive of part time or intermittent employees or native labor casually hired on an hourly or per diem basis, who are citizens or nationals of the United States, or who are aliens who have been admitted to the United States for permanent residence, except that the following categories of civilian officers and employees shall be

Proposed Legislation

Existing Legislation

covered only upon a determination by the head of the department concerned that such status is the proximate result of employment by the department:

(i) persons who enter any status listed in section 2 of this Act within the continental limits of the United States and

(ii) persons who enter any status listed in section 2 of this Act who are residents at or in the vicinity of their places of employment in the Territories and possessions or in foreign countries and who were not living there solely as a result of their employment.

Explanation: This section adopts by reference the definition of the phrase "member of the uniformed services" contained in section 102(a) and (b) of the Career Compensation Act of 1949 (37 U.S.C. 231). Changes in the terminology of the definition set forth in the Career Compensation Act that might occur from time to time due to organizational or other changes in the United States defense forces will automatically be reflected.

(2) Section 1(b) is amended--

(A) by inserting the words "Air Force," after the word "Navy,"; and

(B) by striking out the words "paragraph (a)(3) above" and inserting the words "paragraph (a)(2) above" in place thereof.

Sec. 1. (b) the term "active service" means active service in the Army, Navy, Marine Corps, and Coast Guard of the United States, including active Federal service performed by personnel of the retired and reserve components of these forces, the Coast and Geodetic Survey, the Public Health Service, and active Federal service performed by the civilian officers and employees defined in paragraph (a) (3) above;

Explanation: This section adds the Air Force to the departments to which "active service" applies. It also makes a technical adjustment in numbering.

Proposed Legislation

(3) Section 2(a) is amended--

(A) by striking out the words "or besieged by a hostile force" in the first sentence and inserting the words "besieged by a hostile force, or detained in a foreign country against his will" in place thereof;

(B) by inserting the words "or employment" after the word "service" in the second sentence; and

(C) by striking out the words "or besieged by a hostile force" in the last sentence and inserting the words "besieged by a hostile force, or detained in a foreign country against their will" in place thereof.

Existing Legislation

Sec. 2(a) Any person who is in the active service, or is performing full-time training duty, other full-time duty, or inactive duty training and who is officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force shall, for the period he is officially carried or determined to be in any such status, be entitled to receive or to have credited to his account the same basic pay, special pay, incentive pay, basic allowance for quarters, basic allowance for subsistence, and station per diem allowances for not to exceed ninety days, to which he was entitled at the beginning of such period of absence or may become entitled thereafter, except that the pay and allowances for a person who is performing full-time training duty or other full-time duty without pay, or inactive duty training with or without pay, shall be that to which he would have been entitled if he had been performing full-time active duty with pay, and entitlement to pay and allowances shall terminate upon the date of receipt by the department concerned of evidence that the person is dead or upon the date of death prescribed or determined under provisions of section 5 of this Act. Such entitlement to pay and allowances shall not terminate upon the expiration of a term of service during absence and, in case of death during absence, shall not terminate earlier than the dates herein prescribed. There shall be no entitlement to pay and allowances for any period during which such person may be officially determined absent from his post of duty without authority and he shall be indebted to the Government for any payments from amounts credited to his

Proposed Legislation

Existing Legislation

account for such period. Persons performing full-time training duty, or inactive duty training shall be entitled to the benefits of this section only when such persons are officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or besieged by a hostile force as a result of the performance of prescribed duty ordered by competent authority.

Explanation: This section clarifies the definition of missing person by specifically identifying as an additional category those persons who are "detained in a foreign country against his (their) will." It thereby provides specific authority for the application of the Act during periods when a state of war does not exist, and coverage for personnel who disappear, or are apprehended and held, under other than battle conditions. The change removes the administrative anomaly now occurring when persons whose whereabouts are known must be carried in a missing status.

The term "service" is expanded by allowing the words "or employment" to relate more clearly to both civilian and military personnel.

(4) The first sentence of section 5 is amended--

(A) by striking out the words "missing or missing in action" and inserting the words "entitled under section 2 of this Act to receive or be credited with pay and allowances" in place thereof; and

(B) by striking out the words "being a prisoner or of being interned" and inserting the words "the circumstances of the continued absence" in place thereof.

Sec. 5 When the twelve months' period from date of commencement of absence is about to expire in any case of a person missing or missing in action and no official report of death or of being a prisoner or of being interned has been received, the head of the department concerned shall cause a full review of the case to be made. Following such review and when the twelve months' absence shall have expired, or following any subsequent review of the case which shall be made whenever warranted by information received or other circumstances, the head of the department concerned is

Proposed LegislationExisting Legislation

authorized to direct the continuance of the person's missing status, if the person may reasonably be presumed to be living, or is authorized to make a finding of death. When a finding of death is made it shall include the date upon which death shall be presumed to have occurred for the purposes of termination of crediting pay and allowances, settlements of accounts, and payments of death gratuities and such date shall be the day following the day of expiration of an absence of twelve months, or in cases in which the missing status shall have been continued as hereinbefore authorized, a day to be determined by the head of the department.

Explanation: The deletions and additions in this section provide technical conformance to the changes incorporated in section 2 of the Act. The phrase "the circumstances of the continued absence" which is substituted for "being a prisoner or of being interned" encompasses the circumstances set forth in section 2.

Proposed Legislation

(5) Section 6 is amended--

(A) by striking out the words "and in the hands of a hostile force or is interned in a foreign country" in the first sentence; and

(B) by striking out the words "or missing in action" in the second sentence and inserting the words "under the conditions specified in section 2 of this Act" in place thereof.

Existing Legislation

Sec. 6. When it is officially reported by the head of the department concerned that a person missing under the conditions specified in section 2 of this Act is alive and in the hands of a hostile force or is interned in a foreign country, the payments authorized by section 3 of this Act are, subject to the provisions of section 2 of this Act, authorized to be made for a period not to extend beyond the date of the receipt by the head of the department concerned of evidence that the missing person is dead or has returned to the controllable jurisdiction of the department concerned. When a person missing or missing in action is continued in a missing status under section 5 of this Act, such person shall continue to be entitled to have pay and allowances credited as provided in section 2 of this Act and payments of allotments, as provided in section 3 of this Act, are authorized to be continued, increased, or initiated.

Explanation:

The changes made by this section conform the wording of section 6 with the clarifications made in section 2.

Proposed Legislation

(6) Section 7 is amended by striking out the words "in November 1941 and any month subsequent thereto."

Existing Legislation

Sec. 7. The head of the department concerned is authorized to direct the payment of new allotments from the pay of persons in active service (other than persons entitled under section 2 or section 14 of this Act to receive pay and allowances) to increase or decrease the amount of any allotment heretofore or hereafter made by such persons and to continue payment of any allotments of such person which may have expired in November 1941 and any month subsequent thereto, with or without the consent of such person, subject in all cases to termination by specific request of such persons, whenever in the judgment of the head of the department such action is considered essential for the well-being and protection of dependents of persons in active service.

Explanation:

This section deletes unnecessary language from section 7 of the Act.

Proposed Legislation

(7) Section 10 is amended by inserting the words "Air Force," after the word "Navy".

Existing Legislation

Sec. 10. The determination of the fact of dependency under the provisions of this Act, the determination of the fact of dependency for the purpose of payment of all six months' death gratuities as authorized by law, and the determination of the fact of dependency under the provisions of any and all other laws providing for the payment of pay, allowances, or other emoluments to enlisted personnel in the Army, Navy, Marine Corps, and Coast Guard of the United States where such payments are contingent upon dependency, shall be made by the head of the department concerned, or by such subordinate as he may designate, and any such determination so made shall be final and conclusive.

Explanation:

This section adds "Air Force" to the listing of military services set forth in section 10 of the Act.

Proposed Legislation

(8) The first sentence of section 12 is amended by striking out the words "missing for a period of thirty days or more, interned in a foreign country, or captured by a hostile force" and inserting the words "absent for a period of thirty days or more in any status listed in section 2 of this Act" in place thereof.

Existing Legislation

Sec. 12. The dependents and household and personal effects of any person in active service (without regard to pay grade) who is officially reported as dead, injured, missing for a period of thirty days or more, interned in a foreign country, or captured by a hostile force, may be moved (including packing, crating, drayage, temporary storage, and unpacking of household and personal effects) to the official residence of record for any such person or the residence of his dependent, next of kin, or other person entitled to receive custody of the effects in accordance with regulations issued by the head of the department concerned; or, upon application by such dependent, next of kin, or other person, or upon the person's application if injured, to such other location as may be determined in advance or subsequently approved by the head of the department concerned or by such person as he may designate. When the head of the department concerned determines that an emergency exists and that such sale would be in the best interests of the Government, he may provide for the disposition of the motor vehicles and other bulky items of such household and personal effects of the person by public or private sale. Prior to any such sale, and if practicable, a reasonable effort shall be made to determine the desires of the interested persons. The net proceeds received from such sale shall be transmitted to the owner or to the other persons in accordance with regulations issued by the head of the department concerned; but if there be no such persons or if such persons or their addresses are not ascertainable within one year from the date of sale, the net proceeds may be covered into the Treasury as miscellaneous receipts.

Proposed LegislationExisting Legislation

Claims for net proceeds which are covered into the Treasury under the authority of this section may be filed with the General Accounting Office by the rightful owners, their heirs or next of kin, or their legal representatives at any time prior to the expiration of five years from the date the proceeds are covered into the Treasury; and, if so filed, the General Accounting Office shall allow or disallow the claim. When such claim is allowed it shall be paid from the appropriation for refunding moneys erroneously received and covered. If claims are not filed prior to the expiration of five years from the date the proceeds are covered into the Treasury, they shall be barred from being acted on by the courts or the General Accounting Office. The provisions of this section do not amend or repeal the Federal Tort Claims Act (60 Stat. 842-847), as amended; sections 2575, 2733, 4712, 4713, 6522, 9712, 9713, title 10, United States Code; or section 507, title 14, United States Code. The head of the department concerned is authorized to store the household and personal effects of the person until such time as proper disposition can be made. The cost of such storage and transportation, including packing, crating, drayage, temporary storage, and unpacking of household and personal effects, shall be charged against appropriations currently available. In lieu of transportation authorized by this section for dependents, the head of the department concerned may authorize the payment in money of amounts equal to such commercial transportation costs or a monetary allowance in lieu of transportation as authorized by law for the whole or such part of travel for which transportation in

Proposed Legislation

Existing Legislation

kind is not furnished, when such travel shall have been completed. When the person is in an "injured" status, the movement of dependents or household and personal effects provided for herein may be authorized only in cases where the anticipated period of hospitalization or treatment will be of prolonged duration. No transportation shall be authorized pursuant to this section upon application by dependents unless a reasonable relationship exists between the conditions and circumstances of the dependents and the destination to which transportation is requested. Beginning June 25, 1950, and for the purposes of this section only, the terms "household and personal effects" and "household Effects" may include, in addition to other authorized weight allowances, not to exceed one privately owned motor vehicle, shipment of which at Government expense is authorized in those cases where the vehicle is located outside the continental limits of the United States or in Alaska.

Explanation:

The changes made by this section conform the wording of section 12 with section 2 of the Act.

Proposed Legislation

(9) Section 13 is amended to read as follows:

"Sec. 13. Notwithstanding any other provision of law, in the case of any taxable year beginning after December 31, 1940, no Federal income tax return of, or payment of any Federal income tax by--

"(1) a member of the uniformed services as defined in section 102(a) and (b) of the Career Compensation Act of 1949, as amended (37 U.S.C. 231 (a) and (b)); or

"(2) any civilian officer or employee of any department; who, at the time any such return or payment would otherwise become due, is absent from his duty station under the conditions specified in section 2 of this Act, shall become due until the earlier of the following dates--

"(A) the fifteenth day of the third month in which he ceased (except by reason of death or incompetency) to be absent from his duty station under the conditions specified in section 2 of this Act, unless before the expiration of that fifteenth day he again is absent from his duty station under the conditions specified in section 2 of this Act; or

"(B) the fifteenth day of the third month following the month in which an executor, administrator, or conservator of the estate of the taxpayer is appointed.

Such due date is prescribed subject to the power of the Secretary of the Treasury or his delegate to extend the

Existing Legislation

Sec. 13. Notwithstanding any other provision of law, in the case of any taxable year beginning after December 31, 1940, no Federal income-tax return of, or payment of any Federal income tax by--

(a) any individual in the military or naval forces of the United States, or

(b) any civilian officer or employee of any department who, at the time any such return or payment would otherwise become due, is a prisoner of war or is otherwise detained by any foreign government with which the United States is at war, or

(c) any individual in the military or naval forces of the United States serving on sea duty or outside the continental United States at the time any such return or payment would otherwise become due, shall become due until one of the following dates, which ever is the earliest:

(1) the fifteenth day of the third month following the month in which he ceases (except by reason of death or incompetency) to be a prisoner of war, or to be detained by any foreign government with which the United States is at war, or to be a member of the military or naval forces of the United States serving on sea duty or outside the continental United States, as the case may be, unless prior to the expiration of such fifteenth day he again is a prisoner of war, or is detained by any foreign government with which the United States is at war, or is a member of the military or naval forces of the United States serving on sea duty or outside the continental United States;

(2) December 31, 1947; or

(3) the fifteenth day of the third month following the month in which an executor, administrator, or conservator of the estate of the taxpayer is appointed.

Proposed Legislation

time for filing such return or paying such tax, as in other cases, and to assess and collect the tax as provided in sections 6851, 6861, and 6871 of the Internal Revenue Code of 1954 in cases in which such assessment or collection is jeopardized and in cases of bankruptcy or receivership."

Existing Legislation

Such due date is prescribed subject to the power of the Commissioner of Internal Revenue to extend the time for filing such return or paying such tax, as in other cases, and to assess and collect the tax as provided in sections 146, 273, and 274 of the Internal Revenue Code in cases in which such assessment or collection is jeopardized and in cases of bankruptcy or receivership. For the purpose of this section, the term "continental United States" means the States and the District of Columbia, and the terms "individual" or "member" of the military or naval forces of the United States means any person in the Army of the United States, the United States Navy, the Marine Corps, the Army or Navy Nurse Corps (female), the Coast Guard, the Coast and Geodetic Survey, or the Public Health Service.

Explanation:

In the administration of missing person cases under the Internal Revenue Act no satisfactory legal method for filing of returns and final settlement of tax obligations is provided.

This section provides for the filing and payment of Federal income taxes on the fifteenth day of the third month after termination of the "missing" status or after an executor, administrator, or conservator of the estate of the "missing" person has been appointed.

Changes are made in the wording to conform section 13 with changes made in sections 1 and 2 of the Act.

Approved For Release 2002/05/17 : CIA-RDP75B00380R000800130015-8



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Changes in Existing Law Made by the Bill, As Reported

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

AN ACT

To provide for continuing payment of pay and allowances of personnel of the Army, Navy, Marine Corps, and Coast Guard, including the retired and Reserve components thereof; the Coast and Geodetic Survey and the Public Health Service, and civilian employees of the executive departments, independent establishments, and agencies, during periods of absence from post of duty, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of this Act--

(a) the term "person" means (1) commissioned officer, warrant officer, enlisted person (including persons selected under the Selective Training and Service Act, as amended),

member of the Army or Navy Nurse Corps (female), wherever serving; (2) commissioned officer of the Coast and Geodetic Survey or the Public Health Service; and (3) 7

a member of the uniformed services as defined in section 102 (a) and (b) of the Career Compensation Act of 1949, as amended (37 U.S.C. 231(a) and (b)); and (2) Civilian officers and employees of the departments, exclusive of part time or intermittent employees or native labor causally hired on an hourly or per diem basis, who are citizens or nationals of the United States, or who are aliens who have been admitted to the United States for permanent residence, except that the following categories of civilian officers and employees shall be covered only upon a determination by the head of the department concerned that such status is the proximate result of employment by the department:

(i) persons who enter any status listed in section 2 of this Act within the continental limits of the United States and

(ii) persons who enter any status listed in section 2 of this Act who are residents at or in the vicinity of their places of employment in the Territories and possessions or in foreign countries and who were not living there solely as a result of their employment.

(b) the term "active service" means active service in the Army, Navy, Air Force, Marine Corps, and Coast Guard of the

personnel of the retired and reserve components of these forces,
the Coast and Geodetic Survey, the Public Health Service, and
active Federal service performed by the civilian officers and
employees defined in paragraph (a) (3) paragraph (a)(2) above;

* * * * *

Sec. 2. (a) Any person who is in the active service, or is
performing full-time training duty, other full-time duty, or
inactive duty training and who is officially determined to be
absent in a status of missing, missing in action, interned in a
foreign country, captured by a hostile force, beleaguered by a
hostile force, or/ besieged by a hostile force, or detained in a
foreign country against his will shall, for the period he is officially
carried or determined to be in any such status, be entitled to receive
or to have credited to his account the same basic pay, special pay,
incentive pay, basic allowance for quarters, basic allowance
for subsistence, and station per diem allowances for not to exceed
ninety days, to which he was entitled at the beginning of such
period of absence or may become entitled thereafter, except that
the pay and allowances for a person who is performing full-time
training duty or other full-time duty without pay, or inactive duty

training with or without pay, shall be that to which he would have been entitled if he had been performing full-time active duty with pay, and entitlement to pay and allowances shall terminate upon the date of receipt by the department concerned of evidence that the person is dead or upon the date of death prescribed or determined under provisions of section 5 of this Act. Such entitlement to pay and allowances shall not terminate upon the expiration of a term of service or employment during absence and, in case of death during absence, shall not terminate earlier than the dates herein prescribed. There shall be no entitlement to pay and allowances for any period during which such person may be officially determined absent from his post of duty without authority and he shall be indebted to the Government for any payments from amounts credited to his account for such period. Persons performing full-time training duty, or inactive duty training shall be entitled to the benefits of this section only when such persons are officially determined to be absent in a status of missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, or/ beseiged by a hostile force, or detained in a foreign country against their will as a result of the performance of prescribed duty ordered by competent authority.

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Sec. 5. When the twelve months' period from date of commencement of absence is about to expire in any case of a person /missing or missing in action/ entitled under section 2 of this Act to receive or be credited with pay and allowances and no official report of death or of /being a prisoner or of being interned/ the circumstances of the continued absence has been received, the head of the department concerned shall cause a full review of the case to be made. Following such review and when the twelve months' absence shall have expired, or following any subsequent review of the case which shall be made whenever warranted by information received or other circumstances, the head of the department concerned is authorized to direct the continuance of the person's missing status, if the person may reasonably be presumed to be living, or is authorized to make a finding of death. When a finding of death is made it shall include the date upon which death shall be presumed to have occurred for the purposes of termination of crediting pay and allowances, settlements of accounts, and payments of death gratuities and such date shall be the day following the day of expiration of an absence of twelve months, or in cases in which the missing status shall have been continued as hereinbefore authorized, a day to be determined by the head of the department.

Sec. 6. When it is officially reported by the head of the department concerned that a person missing under the conditions specified in section 2 of this Act is alive and in the hands of a hostile force or is interned in a foreign country⁷, the payments authorized by section 3 of this Act are, subject to the provisions of section 2 of this Act, authorized to be made for a period not to extend beyond the date of the receipt by the head of the department concerned of evidence that the missing person is dead or has returned to the controllable jurisdiction of the department concerned. When a person missing or missing in action⁷ under the conditions specified in section 2 of this Act is continued in a missing status under section 5 of this Act, such person shall continue to be entitled to have pay and allowances credited as provided in section 2 of this Act and payments of allotments, as provided in section 3 of this Act, are authorized to be continued, increased, or initiated.

Sec. 7. The head of the department concerned is authorized to direct the payment of new allotments from the pay of persons in active service (other than persons entitled under section 2 or section 14 of this Act to receive pay and allowances) to increase or decrease the amount of any allotment heretofore or hereafter made by such persons and to continue payment of any allotments

of such person which may have expired /in November 1941 and any month subsequent thereto/, with or without the consent of such person, subject in all cases to termination by specific request of such persons, whenever in the judgment of the head of the department such action is considered essential for the well-being and protection of dependents of persons in active service.

* * * * *

Sec. 10. The determination of the fact of dependency under the provisions of this Act, the determination of the fact of dependency for the purpose of payment of all six months' death gratuities as authorized by law, and the determination of the fact of dependency under the provisions of any and all other laws providing for the payment of pay, allowances, or other emoluments to enlisted personnel in the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States where such payments are contingent upon dependency, shall be made by the head of the department concerned, or by such subordinate as he may designate, and any such determination so made shall be final and conclusive.

* * * * *

Sec. 12. The dependents and household and personal effects of any person in active service (without regard to pay grade) who is officially reported as dead, injured, missing for a period of thirty days or more, interned in a foreign country, or captured by a hostile force absent for a period of thirty days or more in any status listed in section 22 of this Act, may be moved (including packing, crating, drayage, temporary storage, and unpacking of household and personal effects) to the official residence of record for any such person or to the residence of his dependent, next of kin, or other person entitled to receive custody of the effects in accordance with regulations issued by the head of the department concerned; or, upon application by such dependent, next of kin, or other person, or upon the person's application if injured, to such other location as may be determined in advance or subsequently approved by the head of the department concerned or by such person as he may designate. When the head of the department concerned determines that an emergency exists and that such sale would be in the best interests of the Government, he may provide for the disposition of the motor vehicles and other bulky items of such household and personal effects of the person by public or private sale. Prior to any such sale, and if practicable, a reasonable

effort shall be made to determine the desires of the interested persons. The net proceeds received from such sale shall be transmitted to the owner or to the other persons in accordance with regulations issued by head of the department concerned; but if there be no such persons or if such persons or their addresses are not ascertainable within one year from the date of sale, the net proceeds may be covered into the Treasury as miscellaneous receipts. Claims for net proceeds which are covered into the Treasury under the authority of this section may be filed with the General Accounting Office by the rightful owners, their heirs or next of kin, or their legal representatives at any time prior to the expiration of five years from the date the proceeds are covered into the Treasury; and, if so filed, the General Accounting Office shall allow or disallow the claim. When such claim is allowed it shall be paid from the appropriation for refunding moneys erroneously received and covered. If claims are not filed prior to the expiration of five years from the date the proceeds are covered into the Treasury, they shall be barred from being acted on by the courts or the General Accounting Office. The provisions of this section do not amend or repeal the Federal Tort Claims Act (60 Stat. 8420847), as amended; sections 2575, 2733, 4712, 4713, 6522, 9712, 9713, title 10, United States Code; or section 507,

title 14, United States Code. The head of the department concerned is authorized to store the household and personal effects of the person until such time as proper disposition can be made. The cost of such storage and transportation, including packing, crating, drayage, temporary storage, and unpacking of household and personal effects, shall be charged against appropriations currently available. In lieu of transportation authorized by this section for dependents, the head of the department concerned may authorize the payment in money of amounts equal to such commercial transportation costs or a monetary allowance in lieu of transportation as authorized by law for the whole or such part of travel for which transportation in kind is not furnished, when such travel shall have been completed. When the person is in an "injured" status, the movement of dependents or household and personal effects provided for herein may be authorized only in cases where the anticipated period of hospitalization or treatment will be of prolonged duration. No transportation shall be authorized pursuant to this section upon application by dependents unless a reasonable relationship exists between the condition and circumstances of the dependents and the destination to which transportation is requested. Beginning June 25, 1950, and for the purposes of this section only, the terms "household and personal effects" and "household effects" may

include, in addition to other authorized weight allowances, not to exceed one privately owned motor vehicle, shipment of which at Government expense is authorized in those cases where the vehicle is located outside the continental limits of the United States or in Alaska.

Sec. 13. Notwithstanding any other provision of law, in the case of any taxable year beginning after December 31, 1940, no Federal income tax return of, or payment of any Federal income tax by--

/(a) any individual in the military or naval forces of the United States, 7

(1) a member of the uniformed services as defined in section 102(a) and (b) of the Career Compensation Act of 1949, as amended (37 U. S. C. 231(a) and (b)); or

/(b) (2) any civilian officer or employee of any /department who, at the time any such return or payment would otherwise become due, is a prisoner of war or is otherwise detained by any foreign government with which the United States is at war, or /department;

/(c) any individual in the military or naval forces of the United States serving on sea duty or outside the continental United States 7 who, at the time any such return or payment would

otherwise become due, is absent from his duty station under the conditions specified in section 2 of this Act, shall become due until [one] the earlier of the following [dates, which ever is the earliest:] dates--

[(1)] (A) the fifteenth day of the third month [following the month/ in which he [ceases] ceased (except by reason of death or incompetency) to be [a prisoner of war, or to be detained by any foreign government with which the United States is at war, or to be a member of the military or naval forces of the United States serving on sea duty or outside the continental United States as the case may be/ absent from his duty station under the conditions specified in section 2 of this Act, unless [prior to] before the expiration of [such/ that fifteenth day he again is [a prisoner of war, or is detained by any foreign government with which the United States is at war, or is a member of the military or naval forces of the United States serving on sea duty or outside the continental United States] absent from his duty station under the conditions specified in section 2 of this Act; or

[(2)] December 31, 1947; or/

[(3)] (B) the fifteenth day of the third month following the month in which an executor, administrator, or conservator of the estate of the taxpayer is appointed.

Such due date is prescribed subject to the power of the Commissioner of Internal Revenue/ Secretary of the Treasury or his delegate to extend the time for filing such return or paying such tax, as in other cases, and to assess and collect the tax as provided in sections 146, 273, and 274/ 6851, 6861, and 6871 of the Internal Revenue Code of 1954 in cases in which such assessment or collection is jeopardized and in cases of bankruptcy or receivership. For the purpose of this section, the term "continental United States" means the States and the District of Columbia, and the terms "individual" or "member" of the military or naval forces of the United States means any person in the Army of the United States, the United States Navy, the Marine Corps, the Army or Navy Nurse Corps (female), the Coast Guard, the Coast and Geodetic Survey or the Public Health Service.

18 Oct 63

AFJALC/A J Morrison/55401

H. R. 2989 (88)

SAF-LLL (Lt Col Reiter)

1. Per informal request of Mr. Darden, Counsel, SASC, attached is the informal opinion of the International Affairs Division (AFJALB) of this office with respect to the necessity of retaining the words "detained in a foreign country against his will" in H. R. 2989.
2. This opinion has been informally coordinated with Mr. Forman, Assistant General Counsel (International Affairs), OSD.

SIGNED

ALLAN J. MORRISON
Legislative Attorney
Legislative Division
Office of The Judge Advocate General

Atch - Opinion

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CC:

CIA, Gen Counsel

Review of H. R. 2989 (Amendment of Missing Persons Act)

1. "Internment" is a word of art used in international law in the context of hostilities, existing or imminent. It stems from the principle of international law (embodied in the Hague Conventions) that requires a neutral State to abstain from all action which amounts to strengthening the armed forces of the belligerents. Thus, members of the armed forces of a belligerent who seek refuge in, or have been driven by the exigencies of battle into, the territory of a neutral country have been "interned". "Internment" may also refer to those persons, of whatever nationality, whom, being found in a country in time of war or upon the eve of war, are detained in the interest of public safety, or sometimes for their own safety.

2. The "internee" is detained not for the commission of any unlawful act; he is detained because of his status, e.g., being a national of a belligerent power and prevailing conditions beyond his control. It is a temporary measure. Once the conditions requiring internment are removed, the detention is lifted. Internment is thus not a punishment for crime. One writer has referred to internment as "honorable confinement" which the internees must not resist and the expense of which their government is bound to bear (International Public Law, Taylor, page 672).

3. A U.S. Federal court in holding that the act of internment did not violate any provision of the U.S. Constitution compared internment with the temporary confinement necessary to the exclusion or deportment of aliens. The court emphasized the distinction between such temporary confinement and imprisonment as a punitive sanction (Ex parte Toscano, 208 F. 938, 940).

4. The term "internment", strictly construed, would exclude certain categories of persons, military or civilian, who are detained in a foreign country for alleged unlawful acts such as espionage, border violations, illegal entry, etc.

5. In our opinion, therefore, the concept of internment is not broad enough to include U.S. nationals or U.S. employees detained during peacetime by a foreign country for alleged unlawful acts.

Passed House as reported (Voice) 7/8/63

To Senate Armed Services - 7/10/63